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29
30 IN THE UNITED STATES DISTRICT COURT
31 FOR THE DISTRICT OF ARIZONA

32
33 KELVIN D. DANIEL, et al

34 Plaintiffs,

35 v.

36 SWIFT TRANSPORTATION
37 CORPORATION,

38 Defendant.

Case No. 2:11-cv-01548-PHX-ROS

39
40 **DECLARATION OF MATTHEW A.
41 DOOLEY**

42
43 Assigned to: Hon. Roslyn O. Silver

1. I am Matthew A. Dooley, a partner at Stumphauzer, O'Toole, McLaughlin,
2 McGlamery & Loughman, Co. LPA. I have personal knowledge of the facts in
3 this declaration. To the extent I do not have first-hand knowledge of the facts,
4 e.g. the size and dates of productions, I have relied on inquiries made to other
5 lawyers and staff assigned to the case with first-hand information of the facts.
6

7. Plaintiffs propounded their First Set of Interrogatories and Production of
8 Documents ("Plaintiffs' Discovery") upon Swift on March 5, 2012.
9

10. On April 20, 2012, Swift served its initial objections and responses to Plaintiffs'
11 Discovery, in which Swift identified 168 employees whose job function
12 includes procuring or reviewing consumer reports for employment purposes.
13

14. [Ex. A]

15. These individuals were not likewise identified in Swift's Rule 26(a)(1)
16 disclosures, and not one of these individuals signed a declaration now in
17 dispute.

18. On April 13, 2012, Swift served its First Supplemental Disclosures attaching
19 365 pages of documents.

20. On April 23, 2012, Swift served its Second Supplemental Disclosures attaching
21 122,224 pages of documents.

22. On June 7, 2012, Swift served its Third Supplemental Disclosures attaching
23 86,311 pages of documents.

24. On July 13, 2012, Swift served its Fourth Supplemental Disclosures attaching
25 43,363 pages of documents. Swift also produced one thumb drive and one

1 external hard-drive collectively containing approximately 17 gigabytes of data.

2 In hard-copy form, this data comprises over 1,000,000 pages.

3 9. On July 23, 2012, Swift served its Fifth Supplemental Disclosures attaching
4 86,232 pages of documents.

5 10. On July 25, 2012, Swift served its Sixth Supplemental Disclosures attaching
6 702 pages of documents.

7 11. On July 26, 2012, Swift served its Seventh Supplemental Disclosures attaching
8 3,104 pages of documents.

9 12. On August 10, 2012, Swift served its Eighth Supplemental Disclosures
10 attaching 298,035 pages of documents.

11 13. On August 30, Swift served its Ninth Supplemental Disclosure attaching 33,633
12 pages of documents.

13 14. On September 10, 2012 Swift served its Tenth Supplemental Disclosures
15 attaching 634 pages of documents.

16 17. On September 11, 2012, Swift served its Eleventh Supplemental Disclosure
18 attaching 80 pages of documents.

19 20. The parties have held several "meet and confer" conferences to discuss
21 Plaintiffs' objections to Swift's belated tenth and eleventh disclosures and
22 document production.

23 24. 25. These discussions included the 38 putative class member declarations produced
26 by Swift for the first time on September 10, 2012 from individuals not
27 previously disclosed to Plaintiffs.

1 18. Rather, Plaintiffs must move for class certification without an opportunity to
2 cross-examine the declarants and learn why the declarants' signature often does
3 not match handwriting through the declarations, and whether the declarants'
4 even understood the nature of their own declaration.
5
6 19. Many declarations are confusing at best, containing phrases like, "If applicable,
7 I passed a drug test" [Ex. B]
8
9 20. Some contain what appears to be "suggested verbiage" that the declarants
10 would not have divulged on their own. e.g. "I do not recall whether I reviewed
11 a video about the importance of accurately disclosing my background at the
12 orientation." [Ex. B]
13
14 21. Another declarant purports to know that trucking companies run criminal
15 background searches despite having never held a job in the field and still being
16 a trainee. [Ex. B]
17
18 22. Another declarant even goes as far as informing the reader that he wants to
19 recover "nothing" from this class action. [Ex. B]
20
21 23. Swift's late disclosure and production of these declarations upon Plaintiffs at
22 such a late moment clearly is prejudicial to Plaintiffs ability to address Swift's
23 arguments opposing class certification.
24

I declare under the penalty of perjury that the foregoing is true and correct.

EXECUTED on this 20th day of September, 2012.

26
27 Matthew A. Dooley
28